Hahn Property Management Corporation *and* Service Employees International Union, Local Union #18, AFL-CIO, Petitioner. Case 20-RC-15428

August 20, 1982

DECISION AND DIRECTION OF SECOND ELECTION

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objections to an election[1] held on December 4, 1981, and the Acting Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Acting Regional Director's findings and recommendations.

The Acting Regional Director found, and we agree, that the Employer engaged in objectionable conduct as a result of statements made by the Employer's general manager to employees prior to the election. General Manager Woodle admitted that he told employees if the Petitioner won the election "communication would now be employee to union to management. I said this creates an adversary relationship. They could no longer talk to me directly about wages, problems, complaints."

Our dissenting colleague, in finding nothing objectionable in these statements, claims to appreciate the Board's proper role in overseeing representation elections. However, his position is based on employer rights under Section 8(c), which specifically is limited in its application to unfair labor practice proceedings and therefore provides no direct guidance for representation election conduct.[2] The general manager's statements are contrary to the statutory proviso to Section 9(a) of the Act that employees in a collective-bargaining unit will still be able to meet directly with management and to present and adjust grievances. In addition, the statements expressly threaten an "adversary relationship" between unit employees and management.

In order to claim there is no threat in the general manager's statement that direct access to management would be eliminated should the employees select a representative, our colleague seriously distorts that statement. In this diluted version, the manager stated only that the selection of a bargaining representative necessarily changes the relationship between the employer and its employees. We would have less quarrel with such a statement had it been made. The statement actually made, however, threatens a particular adversary relationship which would allegedly preclude the survival of individual rights, contrary to the express intent of the proviso to Section 9(a).

Further, the dissent's reliance on *Eagle Comtronics, Inc.*, 263 NLRB No. 70 (1982), is misplaced, as that case involved merely an incomplete statement of employee rights, not a statement in contradiction of employee rights as here. The latter type of statement does not involve mere legal technicalities and is not to be excused by speculation that it is based on ignorance of the law. Here, the general manager expressly conditioned the continued enjoyment of the Employer's practice to allow direct communication between management and employees on the employees' rejection of the Petitioner. This unambiguous threat has no basis in any section of the Act and is conduct tending to interfere with the employees' free choice in the representation election. See *Sacramento Clinical Laboratory, Inc.*, 242 NLRB 944 (1979).

[Direction of Second Election omitted from publication.][3]

MEMBER HUNTER, dissenting:

I cannot agree with my colleagues' decision to sustain the Petitioner's Objection 7 and direct a rerun election. In brief, that objection alleged, and the Acting Regional Director's investigation revealed, that approximately 3 weeks before the election the Employer's general manager, Woodle, engaged in discussions with individual employees. As noted by the Acting Regional Director, Woodle conceded in his affidavit that, among other things, he told employees that if the Petitioner won the upcoming election "communication would now be employee to union to management. I said this creates an adversary relationship. They could no longer talk to me directly about wages, problems, complaints."

The Acting Regional Director concluded that Woodle's remarks are objectionable as they constitute "clear misstatements of employee rights under Section 9(a) of the Act"; he further noted that similar statements have been construed as a "threat" to deprive employees of their right to direct communications with management concerning grievances.

I disagree. In my view the Employer merely exercised its right under Section 8(c) of the Act to acquaint employees with the fact that, in the event

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was four for, and seven against, the Petitioner; there were no challenged ballots.

[2] *General Shoe Corporation*, 77 NLRB 124 (1948). In any event Sec. 8(c) provides no protection for threats contained in employer statements. See *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (1962).

[3] [*Excelsior* footnote omitted from publication.]

of a union election victory, the relationship between an employer and its employees *necessarily* changes since there is then a statutory representative with whom the employer must bargain over terms and conditions of employment. I see no threat, direct or implied, in such a simple statement of fact. Nor am I persuaded that a different result should obtain merely because the Employer, had it been of a mind to do so and had it been sufficiently knowledgeable in the law, might have gone on to explain to employees in detail all the provisions of Section 9(a) of the Act, including the proviso language.[4] In this connection compare *Eagle Comtronics, Inc.*, 263 NLRB No. 70 (1982), which involves the degree of detail required of an employer which exercises its free speech right to inform employees that they are subject to replacement in the event of an economic strike. In the instant case, as in *Eagle*, an appreciation of this Agency's proper role in overseeing representation matters, coupled with a modicum of commonsense, compels the conclusion that this Board has no business engaging in a strained and hypertechnical reading of campaign material as a basis for overturning an election. Indeed, as then Chairman Miller succinctly put it, when we insist upon a too purist view of what parties may say in election campaigns "the practical result is that freedom of choice has been frustrated by a highly technical application of a principle . . . ."[5]

I agree with this sentiment and, accordingly, I would not sustain the objection.

[4] The proviso permits an employee or employees to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the collective-bargaining agreement, and provided further that the representative has been given an opportunity to be present at such adjustment.

[5] See *Bill's Institutional Commissary Corporation*, 200 NLRB 1148 (1972) (concurring opinion).